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## BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF RULES TO ADDRESS  
UNAUTHORIZED COMMUNICATIONS IN  
MATTERS BEFORE THE ARIZONA POWER  
PLANT AND LINE SITING COMMITTEE AND  
LINE SITING COMMITTEE MATTERS  
BEFORE THE COMMISSION

Docket No. ACC-00000A-05-0613

DECISION NO. 68323ORDER

Open Meeting  
December 6, 2005  
Phoenix, Arizona 85007

BY THE COMMISSION:

FINDINGS OF FACT

1. At the Commissioners' request, Staff opened a rulemaking docket on August 25, 2005, to address possible changes to Commission rule R14-3-113 addressing unauthorized communications.

2. Staff recommends that the Commission issue a Notice of Proposed Rulemaking. Staff recommends that the Commission use the Proposed Rules attached as Exhibits in its Notice of Proposed Rulemaking.

3. The Proposed Rules clarify the application of unauthorized communications in proceedings before the Line Siting Committee and Line Siting proceedings before the Commission.

4. Staff further recommends that the Commission allow Staff to make any appropriate, non-substantive amendments to the Proposed Rules as are necessary for publication in the Arizona Administrative Register by the Secretary of State.

5. Staff has also recommended that the Hearing Division schedule appropriate public comment sessions within the timeframes established in A.R.S. §§ 41-1022.D and 41-1023.D and that

1 the Hearing Division arrange for publication of the times and places of the public comment sessions  
2 in the Arizona Administrative Register in accordance with §§ 1022.D and 1023.D.

3 6. Staff's recommendations are in the public interest and should be adopted.

4 **CONCLUSIONS OF LAW**

5 The Commission has the authority to enact the Proposed Rules under Article XV of the  
6 Arizona Constitution and Title 40 of the Arizona Revised Statutes, Ariz. Const. Art. XV, § 6, A.R.S.  
7 §§40-202, 40-243A, and 40-360.01.D.

8 **ORDER**

9 IT IS THEREFORE ORDERED that a Notice of Proposed Rulemaking for the Proposed  
10 Rules be forwarded to the Secretary of State.

11 IT IS FURTHER ORDERED that Staff may make any appropriate, non-substantive  
12 amendments to the Proposed Rules that are necessary for publication with the Secretary of State.

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1 IT IS FURTHER ORDERED that the Hearing Division schedule public comment sessions in  
2 accordance with Finding of Fact No. 5.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

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5 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

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9 CHAIRMAN

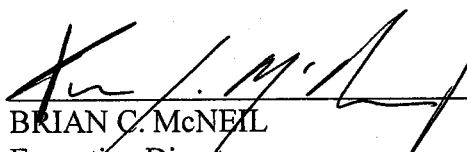
  
10 COMMISSIONER

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15 IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive  
16 Director of the Arizona Corporation Commission, have  
17 hereunto, set my hand and caused the official seal of this  
18 Commission to be affixed at the Capitol, in the City of  
19 Phoenix, this 9<sup>th</sup> day of December, 2005.

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BRIAN C. McNEIL  
Executive Director

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22 DISSENT: \_\_\_\_\_

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24 DISSENT: \_\_\_\_\_

**R14-3-113. Unauthorized Communications**

**A. Purpose.** It is the purpose of this rule to assist the members of the Arizona Corporation Commission, and its employees, in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Commission and hearings before the Arizona Power Plant and Transmission Line Siting Committee.

**B. Application.** The provisions of this rule apply from the time a contested matter is set for public hearing before the Commission and from the time a notice of siting hearing is published pursuant to A.A.C. R14-3-208(A). The provisions of this rule do not apply to rulemaking proceedings.

**C. Prohibitions.**

1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding or siting hearing to a commissioner or commission employee involved in the decision-making process for that proceeding, or siting hearing.
2. No commissioner or commission employee involved in the decision-making process of a contested proceeding or siting hearing shall request, entertain, or consider an unauthorized communication concerning the merits of the proceeding or siting hearing.
3. The provisions of this rule shall not prohibit:
  - a. Communications regarding procedural matters;
  - b. Communications regarding any other proceedings;
  - c. Intra-agency or non-party communications regarding purely technical and legal matters;
  - d. Comments from the general public;

e. Communications among hearing officers, non-party staff and commissioners.

**D. Remedy.**

1. A commissioner, commission employee, who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the matter is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the case or proceeding.
2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
3. If a party to a contested proceeding or siting hearing makes an unauthorized communication, the party may be required to show cause why its claim or interest in the proceeding or siting hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

**R14-3-220. Unauthorized Communications**

**A. Purpose.** It is the purpose of this rule to assist members of the Arizona Power Plant and Line Siting Committee in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Siting Committee.

**B. Application.** The provisions of this rule apply from the time a notice of siting hearing is published pursuant to A.A.C. R14-3-208(A).

**C. Prohibitions.**

1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of siting hearing to member of the Siting Committee involved in the decision-making process for that siting hearing.
2. No member of the Siting Committee shall request, entertain, or consider an unauthorized communication concerning the merits of a siting hearing.
3. The provisions of this rule shall not prohibit:
  - a. Communications regarding procedural matters;
  - b. Communications regarding any other proceedings;
  - c. Intra-agency or non-party communications regarding purely technical and legal matters.

**D. Remedy.**

1. A member of the Siting Committee who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the hearing is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the

communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the siting hearing.

2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
3. If a party to a contested siting hearing makes an unauthorized communication, the party may be required to show cause why its claim or interest in the siting hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.